IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 863 OF 2005

Lavika Palace Co-Op. Housing Society Limited ...Petitioner

Versus

The State of Maharashtra & Ors. ...Respondents

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Mr. Sanjiv Punalekar, counsel for Petitioner

Mr. Darius Khembatta i/b M/s. Federal Rashmikant, counsel for Respondent No.3.

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CORAM: B. H. MARLAPALLE, J.

DATED: 1ST MARCH, 2005

P. C.:-

1. Heard Mr. Sanjiv Punalekar, the learned counsel for the petitioner society.

2. It appears that the petitioner has been granted registration as a society on 17.1.2005 by the Joint Divisional Registrar, Co-operative Societies and the said order is the subject matter of challenge in an appeal filed under Section 152 of the Maharashtra Co-operative Societies Act, 1960, before the State Government. The Society has been served by notice to appear on 18.3.2005 and in the meanwhile the society has been restrained from functioning as society, till the further date of hearing.

3. The respondent No.3 has filed an affidavit in reply and opposed the interim relief sought in prayer clause (d), (e) and (f). It is contended that the total area of plots allotted to him by CIDCO admeasures 3582.247 Sq. Meters and as against that the area constructed admeasures 3309.479 Sq. Mtrs, if regards be had to the occupancy certificate issued by the respondent No.2 on 14.6.2001. The balance area left for construction is about 271.00 Sq. Mtrs and therefore, the respondent No.3 has started construction of the remaining block on the said area. It is further contended that the members of the petitioner society have been obstructing the construction activities and therefore, the respondent No.3 has filed an appeal challenging the registration of the petitioner society.

4. Obviously, these acts of retaliation do not serve the purpose of the respective parties. The flat owners have a right to seek registration of Co-operative societies in the larger interest of all the flat owners and ultimately even the respondent No.3 is required to ensure that the buildings constructed by it become the part of common legal entity i.e. the Co-operative Housing Society and in any case, if the society is aggrieved by the construction undertaken by the respondent No.3, it

may seek Civil or any other appropriate remedy including restraining orders but such a relief cannot be considered in this petition. At the same time, the order passed by the lower appellate Authority restraining the society from its functioning as a society stands to no justification and, therefore, the interest of both the parties would be duly served if the appeal pending alongwith the stay petition, if any, is directed to be decided expeditiously.

5. The petition is, therefore, disposed of by directing the lower appellate forum to hear and decide the pending appeal filed by the respondent No.3 against the registration certificate granted in favour of the petitioner society as expeditiously as possible and preferably within a period of three months from today. In case the petitioner society has any grievance regarding the construction undertaken by the respondent No.3 it may approach to the competent forum for seeking restraining orders but certainly such an order cannot be granted in this petition or in the appeal that is pending before the State Government.

6. The petition is disposed of in terms of the above directions.